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RUEAWJA/DEPT OF JUSTICE WASHDC
RUEATRS/DEPT OF TREASURY WASHDC
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UNCLAS DAKAR 002796

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STATE FOR INL, AF, AF/RSA, AF/W, EB/ESC/TFS AND INR/AA
JUSTICE FOR AFMLS, OIA AND OPDAT
TREASURY FOR FINCEN

E.O. 12958: N/A

TAGS: EFIN KCRM KTFN PTER SNAR SG

SUBJECT: 2006-2007 SENEGAL INCSCR PART II: FINANCIAL
CRIME AND MONEY LAUNDERING (SECOND OF TWO CABLES)

REF: A. STATE 157136

1B. DAKAR 2789

CONTINUATION OF NUMBERED QUESTIONS FROM REF A

117. (CONTINUED) [NOTE: THIS CABLE IS A CONTINUATION OF
REF B. END NOTE.]

ASSET FORFEITURE AND SEIZURE LEGISLATION

Question 51: Has the country enacted laws and established systems for identifying, tracing, freezing, seizing, and forfeiting narcotics-related assets as well as assets derived from or intended for other serious crimes? If so, please describe the authority (regulatory or judicial). Are now legislation or changes in current laws, regulations, judicial or administrative authorities, being considered?

-- The uniform AML law provides for the freezing, seizing, and confiscation of property by judicial order. In addition, the FIU can order the suspension of the execution of a financial transaction for 48 hours. The BCEAO can also order the freezing of funds held by banks.

Question 52: What are the obstacles or disincentives to enacting such laws, regulations, other authorities?

-- Senegal is a civil law country. As such, it does not have a tradition of civil forfeiture.

Question 53: What are the major provisions in current and/or proposed legislation? For example, what assets can be seized? Do they include: instruments of crime such as conveyances used to transport narcotics, or farms on which illicit crops are grown or which are used to support terrorist activity, or intangible property such as bank accounts? Can substitute assets be seized or must a relationship to the crime be proven?

-- The uniform law allows the freezing, seizure and confiscation of any property, corporal or incorporeal, on order of the investigating judge as a conservation measure. Upon conviction for money laundering or attempted money laundering, the law provides for obligatory confiscation of property that is the proceeds of laundering; property into which that property has been converted, commingled, invested or

transformed; and any proceeds (income) derived from that property. There is an exception for an owner who can establish that s/he was unaware of the illegal source of the property. The court may also order, as penal sanctions, the confiscation of any property used or intended to be used in the offense, and the confiscation of other property of the convicted person (the latter does not appear to be ?substitute assets? as that term is understood in the U.S.; the provision does not relate the amount of licit property subject to confiscation to the amount laundered or put beyond the reach of the court).

Question 54: Can legitimate businesses be seized if used to launder drug money, support terrorist activity, or are otherwise related to other criminal proceeds?

-- The AML law provides as stated in the previous response. Whether the business is involved in the offense, or subject to the innocent owner defense, would depend on the facts of the case. A business that is convicted of laundering can be dissolved or closed. The law has not been applied in this regard.

Question 55: What government entities are responsible for tracing, seizing and freezing assets? Is there a period of time ascribed to the action of freezing, after which the assets are released? Are frozen assets confiscated? If yes, by what government entity? Who receives proceeds from asset seizures and forfeitures?

-- The FIU can order a 48-hour freeze (in the form of a delay on the execution of a transaction). Such

action must be converted to a judicial order within 48 hours or the freeze must be lifted. As noted above, the investigating judge can issue orders freezing or seizing assets as a conservatory measure. Confiscated property goes to the public treasury.

Question 56: Does the banking community cooperate with enforcement efforts to trace funds and seize/freeze bank accounts?

-- As far as is known, the banking community has been very cooperative with enforcement efforts to trace funds and seize/freeze bank accounts. The banking community applauded the GOS decision to pass the uniform law on money laundering, which reduces banking secrecy. All but two of the 59 suspicious activity declarations to date have come from the banking sector, and two transactions (wire transfers) have been stopped this year.

Question 57: Does the law allow for civil as well as criminal forfeiture?

-- The uniform law allows explicitly for criminal forfeiture. There is no provision for American-style civil forfeiture. It is not clear what happens to property seized if no prosecution results and no owner is identified.

Question 58: Does the Government enforce existing drug-related asset seizure and forfeiture laws? Does the jurisdiction have adequate police powers and resources to trace, seize and freeze assets? If so, can the jurisdiction freeze assets without undue delay?

-- Customs seizures are common; the number of confiscations is not known.

Question 59: Does the government have an independent system and mechanism for freezing terrorist assets?

-- Though the Government does not have an independent system and mechanism for freezing terrorist assets, there are several entities including the BCEAO, financial entities such as banks (upon request from the Government officials or the BCEAO), and the Ministries of Justice and Interior can order the freezing of terrorist assets.

Question 60: What was the dollar amount of non-terrorist related assets frozen, forfeited and/or seized in the past year? How does this amount compare to amounts seized in previous years?

-- Statistics on the value of seized assets are unavailable.

Question 61: Has the country enacted laws for the sharing of seized narcotics assets, as well as the assets from other serious crimes with other governments?

-- The uniform law provides that the sharing of seized narcotics assets with other governments can be negotiated on a case-by-case basis.

Question 62: Is the Government engaged in bilateral or multilateral negotiations with other governments to enhance asset tracing freezing and seizure?

-- Senegal is required by the uniform law on money laundering to freely exchange information with the FIUs of each of the WAEU countries, although at present only Senegal and Niger have a functioning FIU. The FIU has signed MOUs with the FIUs in Belgium, Lebanon and Nigeria and has begun negotiations with other countries including France and Monaco. Senegal hopes to join the Egmont Group in 2007.

INTERNATIONAL COOPERATION

Question 63: Has the country adopted laws or regulations that allows for the exchange of records with the United States on narcotics and narcotics related money laundering, as well all-source money

laundering, terrorism and terrorist financing investigations and proceedings? Has the jurisdiction reached agreement with the United States authorities on a mechanism for exchange of records in connection with such investigations and proceedings? If not, is the country negotiating in good faith with the United States to establish such an exchange mechanism? Does the jurisdiction have similar arrangements with other jurisdictions?

-- With respect to money laundering, the uniform AML law provides that the FIU may enter into cooperation accords with other FIUs. The Senegalese FIU will soon begin this process with FinCen. The law also contains extensive provisions for the exchange of information on a judicial level. These provisions comport with international standards.

Question 64: Identify all treaties, agreements, or other mechanisms for information exchange that host country has entered into with the USG or other countries, including agreements between the FIU and its counterparts, and those with home country supervisors to facilitate the exchange of supervisory information regarding banks and trust companies operating in the host country. Describe the status of efforts to update such agreements or arrangements.

-- To Mission's knowledge, Senegal has entered into agreements with a number of countries (Tunisia, Morocco and France), and through ECOWAS, regarding mutual assistance in criminal matters. Regarding the

FIU, as stated above, Senegal currently has agreements with the FIUs in Belgium, Lebanon and Nigeria. Senegal hopes to join the Egmont Group in 2007.

Question 65: Has the country cooperated, when requested, with appropriate law enforcement agencies of the USG and other governments investigating financial crimes related to narcotics, terrorism, terrorist financing and other crimes? If the country has cooperated on important cases with USG agencies, please describe.

Mission knows of no instance where the USG has requested such cooperation, but in general Senegalese authorities have demonstrated their commitment and willingness to cooperate.

Question 66: Please detail any instances of refusals to cooperate with foreign governments, as well as any action taken by the USG and any international organization to address such obstacles, including the imposition of sanctions or penalties?

-- Mission is unaware of any refusals to cooperate with foreign governments in routine cases.

Question 67: Is the country a party to the UN International Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention), the UN Convention against Transnational Organized Crime, and, the UN Convention against Corruption or other applicable agreements and conventions? Does it adhere to relevant international money laundering standards, such as the recommendations of the Financial Action Task Force, the policy directive of the EC, and the legislative guidelines of the OAS and/or other similar declarations? If so, what steps is it taking to implement them? If not, what, if any, steps are the country taking to become a party or implement?

-- Senegal is a party to the UN International Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances (Vienna Convention), the Convention against Transnational Organized Crime, the 1999 International Convention for the Suppression of the Financing of Terrorism, and the Convention against Corruption. Senegal accepts the recommendations of the FATF, and is attempting to implement them through, inter alia, the adoption of the uniform law and the operationalization of the first FIU in the region. Senegal is waiting for BCEAO/WAEMU action on the criminalization of terrorist financing.

UPDATES TO ADDITIONAL QUESTIONS FROM 2005 INSCR

Question: Does the jurisdiction have the authority to identify, freeze, seize and/or forfeit terrorist finance-related assets? If so, please describe the authority invoked (regulatory, legislative, judicial, administrative).

-- Pursuant to a September 19, 2002 BCEAO directive, banks are required to freeze assets of UN-designated terrorists and terrorist entities. There are no provisions for seizing and/or forfeiting terrorist financing-related assets.

Question: Has the jurisdiction become a party to the 1999 International Convention for the Suppression of the Financing of Terrorism?

-- Yes. Moreover, the draft BCEAO directive on terrorist financing adopts the definition of terrorism found in the Convention.